

# Law Office of Jack Silver

708 Gravenstein Hwy North, Suite 407 Sebastopol, CA 95472-2808  
Phone 707-528-8175 Email JSilverEnvironmental@gmail.com



***Via Certified Mail -  
Return Receipt Requested***

September 11, 2020

Paul Kraus, Regulatory Manager  
Michael McLaughlin, General Manager  
Eureka ReadyMix Concrete Co., Inc.  
4945 Boyd Road  
Arcata, CA 95521-4408

**Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act)**

Dear Mr. Kraus and Mr. McLaughlin,

## **NOTICE OF ALLEGED VIOLATIONS**

This Notice is provided on behalf of California River Watch ("River Watch") in regard to violations of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, ("CWA" or "the Act") that River Watch alleges are occurring at the Eureka Ready Mix Concrete Company industrial site located at 4945 Boyd Road in the City of Arcata, California, ("Facility"). Notice is being sent to you as the responsible owners, operators, lessees and/or managers of the Facility and real property.

This Notice addresses the violations of the CWA, including violation of the terms of the General Permit for Storm Water Discharges Associated with Industrial Activities ("General Permit"), and the unlawful discharge of pollutants from the Facility to the Mad River and the Eel River - navigable waters of the United States impaired under CWA § 303(d) for sediment and temperature.

CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States unless such discharge complies with various enumerated sections of the Act. Among other things, CWA § 301(a) prohibits discharges not authorized by, or in violation of, the terms of an individual National Pollutant Discharge Elimination System ("NPDES") permit or a general NPDES permit issued pursuant to

CWA § 402(p), 33 U.S.C. § 1342(p). CWA § 402(p), 33 U.S.C. § 1342(p) establishes a framework for regulating storm water discharges under the NPDES permitting program. States with approved NPDES permitting programs are authorized under this section to regulate storm water discharges through permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all storm water dischargers. Pursuant to CWA § 402, the Administrator of the U.S. Environmental Protection Agency ("EPA") has authorized California's State Water Resources Control Board ("SWRCB") to issue NPDES permits including general NPDES permits in California.

The SWRCB elected to issue a statewide general permit for industrial dischargers and issued NPDES Permit No. CAS000001, SWRCB Order No. 92-12-DWQ (the "General Permit") and amended it significantly on April 1, 2014 (effective July 1, 2015), pursuant to CWA § 402(p). To discharge storm water lawfully in California, industrial dischargers must comply with the terms of the General Permit or have obtained an individual NPDES permit and are in compliance with its terms.

CWA § 505(b) requires a citizen to give notice of the intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act. Notice must be given to the alleged violator, the EPA, and the state in which the violations occur. As required by the CWA, this Notice provides notice of the violations that have occurred and continue to occur at the Facility. Consequently, Eureka ReadyMix Concrete Company, Inc. is placed on formal notice by River Watch that after the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled to bring suit in the United States District Court against the Facility for continuing violations of an effluent standard or limitation, NPDES permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, CWA § 301(a), § 402(p), and § 505(a)(1)), as well as the failure to comply with requirements set forth in the California Toxics Rule ("CTR") and the North Coast Regional Water Quality Control Board ("RWQCB") Water Quality Control Plan or "Basin Plan."

The CWA requires that any notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

**1. The Specific Standard, Limitation, or Order Alleged to Have Been Violated**

To comply with this requirement, River Watch notices the Facility of ongoing violations of the substantive and procedural requirements of CWA § 402(p) and violations of NPDES Permit No. CAS000001, (the General Permit) relating to services and operations taking place at the Facility including storm water disposal operations.

The SWRCB's SMARTs reporting database provides documentation that the Facility, rather than seeking coverage under an individual NPDES permit, filed a Notice of Intent ("NOI") agreeing to comply with the terms and conditions of the General Permit. The SWRCB approved the NOI on May 8, 2002 and the Facility was assigned Waste Discharger Identification ("WDID") number 1 12I017241.

River Watch, on the basis of eye-witness reports, records publicly available, and/or records in the possession and control of the Facility, contends that in the continuing gravel and rock storage and cement mixing operations taking place, the Facility has failed and is failing to comply with the strict terms and conditions of the General Permit governing storm water discharges.

In addition to the alleged violations of the terms and conditions of the General Permit, River Watch alleges violations of discharge prohibitions contained in the RWQCB's Basin Plan, which are incorporated by reference as part of the compliance obligations imposed on the Facility under the General Permit (General Permit Section I.C.29).

## **2. The Activity Alleged to Constitute a Violation.**

Full compliance with the mandates of the General Permit is not a mere statutory and regulatory exercise. The Mad River and Eel River watersheds provide habitat for protected wildlife. Failing to care for this critical environment as alleged in this Notice is a violation not only of law, but an abrogation of the trust we demand of Humboldt County landowners.

Having agreed to its terms, the Facility has a continuing burden to demonstrate compliance with each applicable provision of the General Permit. River Watch alleges the following actions and inactions as violations of the General Permit:

### **A. Failure to Properly Sample and Monitor Storm Water Discharges and Failure to Sample from Representative Sampling Locations**

Under the General Permit, the Facility is required to comply with all the following:

- i. "Collect and analyze storm water samples from two (2) Qualifying Storm Events ("QSEs") within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30)" (General Permit XI.B.2).

"Except as provided in Section XI.C.4 (Representative Sampling Reduction), samples shall be collected from each drainage area at all discharge locations. The samples must be:

- a. Representative of storm water associated with industrial activities and any commingled authorized NSWDS.” (General Permit XI.B.4.a.)

The Facility is divided into four (4) drainage areas, (July 27, 2015 SWPPP, Section 2.1.4 *Description of Drainage Areas and Existing Drainage*). River Watch, following review of documents on file with the SWRCB’s SMARTs reporting database, contends the Facility regularly samples at only one (1) discharge location, identified as B2W. Self-monitoring reports reviewed on the SMARTS data base website for the Facility, going back to December 3, 2015, show only results for sampling at DP B2W. The justification for this limited sampling regime is that, while there are four (4) identified drainage areas, surface drainage on the site flows “predominantly” to two separate discharge locations - “Surface drainage in Areas 1 & 2 flows predominantly to the detention ponds and concrete lined basin at B1E sample and discharge point. Surface drainage in Area 2 and Area 4 flows northwest to the northwest corner of the upland and to sample and runoff point B2W.” (SWPPP Section 2.1.4) The failure by the Facility to submit sampling results from runoff point B1E is justified by the contention that discharges into a series of three settling and infiltration ponds prevent discharge off the site, and therefore runoff point B1E is designated as an observation point, but not a discharge sampling location.

River Watch contends that the language in the SWPPP describing the Facility drainage areas, while identifying various conveyances alleged to direct storm water predominantly to designated runoff points, is not detailed sufficiently to determine the extent to which Best Management Practices (“BMPs”) successfully control storm water runoff. The use of the term “predominantly” suggests some doubt. To satisfy the burden to demonstrate compliance with the mandate that sampling is representative of storm water associated with industrial activities (General Permit XI.B.4.a.), the Facility must at least submit sampling results from runoff point B1E to the SMARTS reporting database. The Facility must also provide clear evidence that runoff from each drainage area is not discharging off site at runoff points not identified in the SWPPP.

**B. Failure to Provide Sampling Results for Discharges Resulting from Transportation Activities**

The General Permit requires the Facility to ensure that industrial storm water discharges do not: (a) cause or contribute to an exceedance of any applicable water quality standards in the Mad River or the Eel River (General Permit Section I.E.37, VI.A.); (b) adversely affect human health or the environment (General Permit Section VI.B.); and, (c) do not contain pollutants in quantities that threaten to cause pollution or a public nuisance (General Permit Section III.C., VI.C.). The Facility provides no evidence of complete compliance with these requirements for on-site, transportation-related activities.

Industrial activities at the Facility include transport of aggregate products, heavy equipment use (rubber-tire loader), transfer of cement powder to silos, fuel transfer and

fueling of vehicles and equipment (SWPPP Section 2.2, *Operations Schedule*). Although the SWPPP identifies these transportation activities taking place, the Facility fails to test for copper or zinc which are known pollutants from tires, brake pads, fuels, and lubricants.

**C. Failure to Monitor Discharges from Wastewater Ponds and Implement Effective Erosion Control**

The Facility's Industrial Processes include the use and operation of sedimentation and infiltration ponds as BMPs in drainage areas. Detention/infiltration ponds operate at runoff points B1E and B2W (SWPPP Section 2.1.4). River Watch contends that BMPs for the Facility as set out in SWPPP Sections 3.1.5, *Erosion and Sediment Controls*, and 3.2, *Advanced BMPs*, are not detailed sufficiently to determine whether the ponds are lined or unlined, and whether they are sufficient to hold all regulated storm water prior to evaporation or infiltration. River Watch contends it is highly likely that storm water overflows from the ponds during strong storm events prior to adequate time for sedimentation or infiltration.

**D. Failure to Prepare and Implement an Adequate SWPPP**

The General Permit requires the preparation, implementation, review, and update of an adequate SWPPP which must comply with the standards of Best Available Technology ("BAT") and Best Conventional Pollutant Control Technology ("BCT").

The General Permit requires dischargers to implement BMPs when necessary, to support attainment of water quality standards. The use of BMPs to control or abate the discharge of pollutants is authorized by 40 C.F.R. §122.44(k)(3) because numeric effluent limitations are infeasible, and implementation of BMPs is reasonably necessary to achieve effluent limitations and water quality standards, and to carry out the purposes and intent of the Act. (40 C.F.R. §122.44(k)(4).)

Compliance with the monitoring and reporting program and the requirement to implement effective BMPs is central to an efficacious General Permit program. The General Permit has required all non-exempt facilities to collect and accurately analyze samples from storm events, and implement effective BMPs detailed in the facilities' SWPPPs that are adequate in reducing or preventing pollutants in storm water discharges and authorized non-storm water discharges.

Discharges from the Facility site contain sediment, analyzed as Total Suspended Solids ("TSS"), and Iron, at concentrations which exceed EPA Benchmarks and General Permit Numeric Action Levels ("NAL"), adversely affecting the Mad River and Eel River. River Watch, following review of documents on file with the SWRCB's SMARTS reporting database, contends the Facility has not fully developed and/or adequately implemented a SWPPP for its operations as evidenced by the fact that the Facility has failed

to reduce pollutants in storm water to below water quality objectives or standards. A review of the Facility's Self-Monitoring Reports demonstrates discharges continue from the site to the Mad River exceeding EPA benchmarks and NAL for TSS, and Iron indicating a failure to implement adequate BMPs.

The following analytical results are documented in the self-monitoring reports posted on the SMARTS reporting database for the Facility:

**Analytical Results for Samples Collected April 4, 2020**

Iron Result - 7.1 mg/L Annual NAL Limit - 1 mg/L

**Analytical Results for Samples Collected March 14, 2020**

Iron Result - 8.2 mg/L Annual NAL Limit - 1 mg/L

**Analytical Results for Samples Collected January 8, 2020**

Iron Result - 10 mg/L Annual NAL Limit - 1 mg/L

**Analytical Results for Samples Collected on December 19, 2019**

TSS Result - 150 mg/L Annual NAL Limit - 100 mg/L

Iron Result - 9.1 mg/L Annual NAL Limit - 1 mg/L

**Analytical Results for Samples Collected April 5, 2019**

TSS Result - 280 mg/L Annual NAL Limit - 100 mg/L

Iron Result - 23 mg/L Annual NAL Limit - 1 mg/L

**Analytical Results for Samples Collected April 4, 2020**

Iron Result - 7.1 mg/L Annual NAL Limit - 1 mg/L

**Analytical Results for Samples Collected March 27, 2019**

Iron Result - 5.1 mg/L Annual NAL Limit - 1 mg/L

**Analytical Results for Samples Collected December 24, 2018**

Iron Result - 19 mg/L Annual NAL Limit - 1 mg/L

TSS Result - 260 mg/L Annual NAL Limit - 100 mg/L

**Analytical Results for Samples Collected December 14, 2018**

Iron Result - 15 mg/L Annual NAL Limit - 1 mg/L

TSS Result - 170 mg/L Annual NAL Limit - 100 mg/L

**Analytical Results for Samples Collected April 5, 2018**

Iron Result - 15 mg/L Annual NAL Limit - 1 mg/L

TSS Result - 200 mg/L Annual NAL Limit - 100 mg/L

**Analytical Results for Samples Collected February 22, 2018**

Iron Result - 21 mg/l    Annual NAL Limit - 1 mg/L

TSS Result -250 mg/L    Annual NAL Limit - 100 mg/L

**Analytical Results for Samples Collected January 18, 2018**

Iron Result - 19 mg/L    Annual NAL Limit - 1 mg/L

TSS Result- 250 mg/L    Annual NAL Limit - 100 mg/L

The Discharger has been and will continue to be in violation of the Act every day it discharges storm water containing pollutants as identified in this Notice without adequately implementing its SWPPP and the BMPs required to be incorporated in that SWPPP.

Storm water on the Facility site comes in contact with stockpiled materials during rainfall events, resulting in the pollution of storm water runoff with sediment and metals. Sand, gravel and fresh road surfacing, mixing, loading, vehicle and equipment traffic are further sources of pollution from storm water runoff.

River Watch, following review of the SMARTS reporting database, contends the Facility has failed and continues to fail to eliminate the ongoing discharges of polluted storm water in exceedance of EPA Benchmarks and NAL, and therefore is in violation of the terms of the General Permit.

River Watch contends that from September 1, 2015 to the present, the Facility violated the CWA by discharging pollutants from the Facility to waters of the United States without an individual NPDES permit, and in violation of the General Permit. Furthermore, River Watch contends these violations are continuing.

**3.    The Person or Persons Responsible for the Alleged Violation**

The entity responsible for the alleged violations identified in this Notice is Eureka ReadyMix Concrete Company, Inc., as owner and operator of the Facility, as well as those of its employees responsible for compliance with the General Permit.

**4.    The Location of the Alleged Violation**

The location of the various violations of the CWA is the permanent address of the Facility at 4945 Boyd Road, in Arcata, California – and including the Mad River and Eel River – both waters of the United States.

The Facility properties total approximately 24 acres, with the area subject to industrial activity making up approximately 11 acres of the total acreage. The Facility is approximately 100 feet west of Highway 299, and 100 to 200 feet south of the Mad River, at 40° 54' 30" North Latitude, 124° 04' 28" West Longitude.

**5. The Date or Dates of Violation or a Reasonable Range of Dates During Which the Alleged Activity Occurred**

The range of dates covered by this Notice is September 1, 2015 through the present. This Notice includes all violations which occur after the range of dates covered by this Notice up to the end of trial. Some of the violations are continuous in nature, and therefore each day constitutes a violation.

**6. The Full Name, Address, and Telephone Number of the Person Giving Notice**

The entity giving this Notice is California River Watch, an Internal Revenue Code §501(c)(3) nonprofit, public benefit corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California. River Watch's mailing address is 290 S. Main Street, #817, Sebastopol, CA 95472. River Watch is dedicated to protecting, enhancing and helping to restore surface and groundwaters of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: [US@ncriverwatch.org](mailto:US@ncriverwatch.org), or through its attorneys. River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be directed to the undersigned.

**REMEDIAL MEASURES REQUESTED**

River Watch believes that at a minimum, implementing the requirements of the General Permit as outlined in this Notice is necessary in order to bring the Facility into compliance with the CWA and reduce the biological impacts from its non-compliance upon public health and the environment.

**CONCLUSION**

The violations set forth in this Notice affect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch may use the affected watersheds for recreation, fishing, hiking, photography, nature walks and/or the like. Their health, use, and enjoyment of this natural resource is specifically impaired by the alleged violations of the CWA as set forth in this Notice.

The General Permit, in the very first "Standard Condition," states that "Dischargers shall comply with all standard conditions in this General Permit. Permit noncompliance constitutes a violation of the Clean Water Act and the [California] Water Code and is grounds for enforcement action and/or removal from General Permit coverage" (General Permit Section XXI.A). The gravity of ensuring that the Annual Reports submitted to the



State of California are complete and accurate is highlighted by the General Permit requirement that the person signing and certifying the document certifies that "to the best of my knowledge and belief, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations" (General Permit Section XXII.L).

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$55,800.00 per day/per violation pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1-19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch encourages the Facility to contact counsel for River Watch within **20 days** after receipt of this Notice to continue on-going discussions regarding the allegations detailed in this Notice. In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating the Facility is in compliance with the strict terms and conditions of the General Permit, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jack Silver", with a stylized flourish at the end.

Jack Silver

JS: lhm

### Service List

Andrew Wheeler, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N. W.  
Washington, D.C. 20460

✓ John W. Busterud, Regional Administrator  
U.S. Environmental Protection Agency  
Pacific Southwest, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Eileen Sobeck, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

Daniel E. Cooper, Esquire  
Morrison, Morrison & Cooper  
Registered Agent - Eureka Readymix Concrete Co. Inc.  
611 I Street, Suite A  
Eureka, CA 95501